



MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney
 Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Action:** Expedited Bill 21-13, Forest Conservation Law - Enforcement

Transportation, Infrastructure, Energy, and Environment Committee recommendation: enact as introduced (2-0, Councilmember Riemer absent).

Expedited Bill 21-13, Forest Conservation Law - Enforcement, sponsored by the Council President at the request of the Montgomery County Planning Board, was introduced on July 9, 2013. A public hearing was held on July 23, at which no speakers appeared.

Bill 21-13 would clarify the Planning Board's authority to enforce the forest conservation law, and more specifically to enforce easements previously granted.

A Transportation, Infrastructure, Energy and Environment Committee worksession was held on July 22. The Committee (2-0, Councilmember Riemer absent), recommended enactment of the Bill as introduced, pending any issues raised at the later hearing.

This packet contains:

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Expedited Bill No. 21-13
Concerning: Forest Conservation -
Enforcement
Revised: 7-1-2013 Draft No. 1
Introduced: July 9, 2013
Expires: January 9, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President on behalf of the Montgomery County Planning Board

AN EXPEDITED ACT to:

- (1) clarify the enforcement authority of the Planning Board in the forest conservation law; and
- (2) generally amend the law governing the enforcement of forest conservation requirements.

By amending

Montgomery County Code
Chapter 22, Forest Conservation
Article III, Enforcement, Appeals, and Variances
Sections 19-21, and 19-22A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 22A-16 and Section 22A-20 are amended as follows:**

2 **22A-16. Penalties and other remedies.**

3 * * *

4 (b) ***Enforcement authority.*** The Planning Board has primary enforcement
 5 authority under this Chapter. The Board's enforcement authority
 6 includes holding enforcement hearings, imposing administrative civil
 7 penalties, ordering corrective actions, ordering the payment of civil
 8 finest, ordering compliance with corrective action orders, and any other
 9 action authorized by law. [Administrative enforcement actions may be
 10 initiated by the] The Planning Director may initiate an administrative
 11 enforcement action under this Article.

12 (c) ***Civil actions.*** The Board may bring any civil action authorized by law
 13 that the County may bring under [Sections] Section 1-18, 1-19, [and] or
 14 1-20 to enforce this Chapter or any regulation adopted under it. The
 15 Board may also bring a civil action to enforce:

16 (1) a forest conservation plan and any associated [agreements,
 17 easement, and restrictions,] agreement or restriction, including
 18 any easement; or

19 (2) [to enforce] an administrative order.

20 These remedies are in addition to any remedy that the Board or the
 21 County may initiate under state or County law to enforce the terms of a
 22 regulatory approval which incorporates a forest conservation plan.

23 (d) ***Administrative civil penalty.***

24 (1) In addition to any other remedy under this Article, a person who
 25 violates this Chapter, any regulation adopted under it, a forest
 26 conservation plan, or any associated agreement or restriction,
 27 including any easement, is liable for an administrative civil

penalty imposed by the Planning Board. This administrative civil penalty must not exceed the rate set by the County Council by law or resolution, except as provided in paragraph (3), but must not be less than the amount specified in Section 5-1608(c) of the Natural Resources Article of the Maryland Code. Each day a violation is not corrected is a separate violation.

* * *

22A-20. Hearings and appeals

* * *

(d) *Administrative enforcement process.*

* * *

(2) *Hearing.*

* * *

(C) The Planning Board may designate a hearing officer, including a Hearing examiner from the Office of Zoning and Administrative Hearings, to conduct a hearing and submit a report and recommendation on any alleged violation of this Chapter. The hearing officer must submit the required report and recommendation to the Board not later than [60] 30 days after the hearing record closes. The hearing officer may extend the time to file the report by notifying all parties.

* * *

Sec. 2. Expedited Effective Date.

(a) The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

(b) Any amendment to County Code Chapter 22A made by Section 1 of this Act applies to any enforcement action that the Planning Board takes after this Act takes effect, regardless of whether the alleged violation to which the enforcement action applies was committed before or after this Act took effect.

Approved:

Nancy Navarro, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 21-13

Forest Conservation Law - Enforcement

DESCRIPTION:	Would clarify that the Planning Board can enforce easements granted under the forest conservation law.
PROBLEM:	The Planning Board's authority to enforce the forest conservation law, and specifically easements granted under that law, has been challenged in pending litigation.
GOALS AND OBJECTIVES:	To clarify the enforcement authority of the Planning Board in the forest conservation law.
COORDINATION:	Planning Board, Department of Permitting Services
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Christina Sorrento, Attorney, Planning Board, 301-495-4646; Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A

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MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

June 28, 2013

The Honorable Nancy Navarro
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

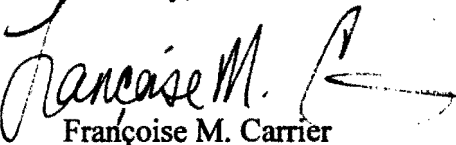
Dear Ms. Navarro:

On June 27, 2013, the Montgomery County Planning Board recommended transmittal of an Expedited Bill to the County Council pertaining to the enforcement section of the Forest Conservation Law (Montgomery County Code Chapter 22A). The proposed Bill does not expand the Forest Conservation Law, but rather clarifies the Planning Board's existing enforcement authority.¹

The revisions to Section 22A-16 clarify the Planning Board's enforcement authority, which includes ordering corrective actions and imposing administrative civil penalties for forest conservation easement violations. The proposed revision to Section 22A-20 provides the hearing officer 30 days after the hearing record closes to provide its written recommendation to the Planning Board, instead of the current 60 day deadline stated in the law. This change eliminates the disparity between the time period stated in the Forest Conservation Law and the Montgomery County Planning Board Enforcement Rules, each of which governs enforcement proceedings in front of a hearing officer and the Planning Board.

Members of the Planning Board and Staff of The Maryland-National Capital Park & Planning Commission are available to assist the Council in its review of the proposed legislation, and extend their thanks to Council Staff for assisting in moving the Bill forward in an expedited manner.

Sincerely,


Françoise M. Carrier
Chair

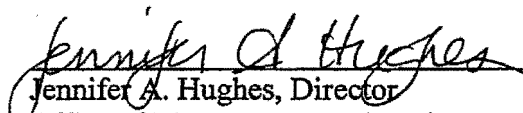
cc: Michael Faden

¹ The Planning Board's enforcement authority has been challenged in recent cases. The proposed Bill seeks to clarify the enforcement authority granted to the Board, and eliminate confusion in the future.

Fiscal Impact Statement
Council Expedited Bill 21-13, Forest Conservation Law – Enforcement

1. Legislative Summary (Enter narrative that explains the purpose of the legislation).
The legislation amends the law to clarify the enforcement authority of the Planning Board in the forest conservation law.
2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.
There are no changes in revenues or expenditures, as the legislation clarifies the authority for revenues currently being collected.
3. Revenue and expenditure estimates covering at least the next 6 fiscal years.
None.
4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.
N/A.
5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.
N/A.
6. An estimate of the staff time needed to implement the bill.
N/A.
7. An explanation of how the addition of new staff responsibilities would affect other duties.
N/A.
8. An estimate of costs when an additional appropriation is needed.
N/A.
9. A description of any variable that could affect revenue and cost estimates.
N/A.
10. Ranges of revenue or expenditures that are uncertain or difficult to project.
N/A.
11. If a bill is likely to have no fiscal impact, why that is the case.
The legislation clarifies the authority for revenues currently being collected.
12. Other fiscal impacts or comments.
None.
13. The following contributed to and concurred with this analysis: (Enter name and department).

Michael F. Faden, Senior Legislative Attorney, County Council


Jennifer A. Hughes, Director
Office of Management and Budget

7/22/13
Date

Economic Impact Statement
Expedited Bill 21-13, Forest Conservation - Enforcement

Background:

This legislation would clarify the Planning Board's authority to enforce the forest conservation law, and more specifically to enforce easements previously granted.

1. The sources of information, assumptions, and methodologies used.

- Since Expedited Bill 21-13 only clarifies the Planning Board's authority to enforce the conservation law rather than creating new responsibilities for the private or public sector it does not have an economic impact.

2. A description of any variable that could affect the economic impact estimates.

- The purpose of this legislation provides clarification to the Planning Board enforcement authority under Section 22A-16 of the Montgomery County Code to include holding enforcement hearings, imposing administrative civil penalties, ordering corrective actions, ordering the payment of civil fines, ordering compliance with corrective action, and any other action authorized by law.
- The legislation has no economic impact on employment, spending, saving, investment, incomes, and property values in the County.

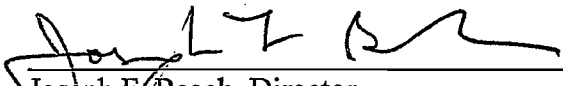
3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

- This bill would have no economic impact on the County residents.

4. If a Bill is likely to have no economic impact, why is that the case?

- The legislation has no economic impact because it provides clarification of enforcement authority of the Planning Board in forest conservation law and amends the law governing the enforcement of forest conservation requirements.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance.



Joseph F. Beach, Director
Department of Finance

7/15/13

Date